

### **III. REMARKS**

Claims 1-22 are pending in this application. By this amendment, claims 1, 7, 8, 14 and 19 have been amended. Applicant does not acquiesce in the correctness of the rejections and reserves the right to present specific arguments regarding any rejected claims not specifically addressed. Further, Applicant reserves the right to pursue the full scope of the subject matter of the original claims in a subsequent patent application that claims priority to the instant application. Reconsideration in view of the following remarks is respectfully requested.

In the Final Office Action of June 6, 2006, claim 7 is objected to for allegedly containing informalities. Claims 1-22 are rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Spiegel (U.S. Patent No. 6,466,918), hereafter “Spiegel.”

#### **A. OBJECTION TO CLAIM 7 FOR INFORMALITIES**

The Office has objected to claim 7 for allegedly containing informalities. Applicant has amended claim 7 to recite, “...wherein a separate record of the frequency of purchase of each of the items is maintained.” Accordingly, Applicant requests that the rejection be withdrawn.

#### **B. REJECTION OF CLAIMS 1-22 UNDER 35 U.S.C. §102(b)**

With regard to the 35 U.S.C. §102(b) rejection over Spiegel, Applicant asserts that Spiegel does not teach each and every feature of the claimed invention. For example, with respect to independent claims 1, 8, 14 and 19, Applicant continues to submit that Spiegel fails to teach that each of the items in the hierarchical structure is located using a query for each level of the hierarchical structure that dynamically generates a page based on the result of the query. The

passage of Spiegel cited by the Office teaches browse trees for locating items that may require the user to navigate downward through multiple levels of the tree to find a desired category. Col. 1, lines 25-59. However, nowhere in the cited passage or elsewhere does Spiegel indicate that queries that dynamically generate a page based on the result of the query are used to navigate the browse tree. In fact, Spiegel does not reference the word “query” or indicate dynamic generation of a page anywhere in the specification. Rather, in Spiegel “[t]he featured books and categories are displayed as respective hyperlinks that provide *a direct path* to the corresponding books and categories.” Col. 7, lines 17-19, emphasis added. To this extent, the featured books and categories of Spiegel are not located using a query for each level, but rather by hyperlinks that provide a direct path to a previously prepared location. Accordingly, Applicant respectfully requests that the Office withdraw its rejection.

With further respect to independent claims 1, 8, 14 and 19, Applicant respectfully submits that Spiegel also fails to teach automatically generating the query for each level of the hierarchical structure. In the Response to Arguments section of the Final Office Action, the Office indicates that it believes the argument to be essentially the same as the above argument. In response, Applicant respectfully submits that a significant difference exists between the two points. For example, even assuming, *arguendo*, that the hyperlinks of Spiegel do contain queries, a query that a specific hyperlink refers to is not necessarily, and is usually not, automatically generated upon activation of the hyperlink. Spiegel does not teach automatically generating anything upon selection of a hyperlink, but rather that its hyperlink provides a direct link. To this extent, whereas Applicant’s initial argument is that Spiegel does not locate items using queries,

but rather direct links, the second argument is that even if Spiegel does use queries, they are not dynamically generated.

In support of this position, Applicant respectfully submits that the portions of Spiegel cited by the Office teach only that the identifying of the most “popular” nodes is done automatically and that these automatically identified nodes are called to the attention of users during navigation of the browse structure by elevating the nodes in the browse structure. Col. 1, line 60 through col. 2, line 4; col. 2, lines 26-36; col. 6, lines 5-20. To this extent, it is the identification of nodes that is automatic, and not the generation of queries for traversing the hierarchy. Accordingly, nowhere in the portions cited by the Office or elsewhere does Spiegel teach automatically generating queries.

The claimed invention, in contrast, includes “...automatically generating the query for each level of the hierarchical structure.” Claim 1. As such, unlike in Spiegel, in the claimed invention a query is automatically generated for each level of the hierarchical structure. This is in contrast to the static link-based structure of Spiegel. Accordingly, Applicant requests that the rejection be withdrawn.

With respect to claims 3, 4, 11 and 12, Applicant respectfully submits that Spiegel also fails to teach storing the operations performed by a user to select an item in the hierarchical structure and analyzing the stored operations. The passage of Spiegel cited by the Office includes a hierarchical structure having nodes corresponding to specific items and the collection of information about the browsing and/or purchasing activities of users and storage of said information in a database. Office Action, page 5, citing col. 6, lines 5-20; col. 9, line 64 through col. 10, line 26. However, Spiegel does not teach that the database that the information is stored

in is hierarchical. Conversely, the illustrations of the stored information in the figures of Spiegel show it in tabular form, suggesting a relational, rather than a hierarchical structure. To this extent, Applicant submits that the Office's factual assertion that the information collected by Spiegel is stored hierarchically is not properly based upon common knowledge and, as such, amounts to Official Notice. This is because, the Office's assertion of inherency presupposes that there is no other way to perform the method of Spiegel except by storing the operations performed by a user to select an item in the hierarchical structure and analyzing the stored operations. Furthermore, Applicant and asserts that factors other than operations performed by a user may yield an item for display by the method of Spiegel. For example, shipping records or accounting records could each be used by Spiegel to display an item. Neither of these is an operation performed by a user. To this extent, it is not inherent that Spiegel must store and / or analyze operations performed by the user. Accordingly, Applicant respectfully requests that the Office support the finding with references that show these features or withdraw the rejection.

With respect to dependent claims, Applicant herein incorporates the arguments presented above with respect to the independent claims from which the claims depend. Furthermore, Applicant submits that all dependant claims are allowable based on their own distinct features. Since the cited art does not teach each and every feature of the claimed invention, Applicant respectfully requests withdrawal of this rejection.

#### **IV. CONCLUSION**

In addition to the above arguments, Applicant submits that each of the pending claims is patentable for one or more additional unique features. To this extent, Applicant does not

acquiesce to the Office's interpretation of the claimed subject matter or the references used in rejecting the claimed subject matter. Additionally, Applicant does not acquiesce to the Office's combinations and modifications of the various references or the motives cited for such combinations and modifications. These features and the appropriateness of the Office's combinations and modifications have not been separately addressed herein for brevity. However, Applicant reserves the right to present such arguments in a later response should one be necessary.

In light of the above, Applicant respectfully submits that all claims are in condition for allowance. Should the Examiner require anything further to place the application in better condition for allowance, the Examiner is invited to contact Applicant's undersigned representative at the number listed below.

Respectfully submitted,



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